IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

RSA.No. 417 of 2007(G)

---

AS.64/2000 of I ADDL. DISTRICT COURT, PALAKKAD
OS.329/1996 of MUNSIFF COURT, CHITTUR

.....

APPELLANTS - APPELLANTS 1 & 2/DEFENDANTS 1 & 2

---

1. MUHAMMED ISMAIL, S/O.MUITHALIF RAWTHER, RESIDING AT KIZHAKKETHARA AMSOM, PATHANARAYIL, MUTHALAMADA VILLAGE, CHITTUR TALUK, PALAKKAD DISTRICT.

2. KAMARUNNISA, D/O.ABDUL RAHIMAN AND W/O.MUHAMMED ISMAIL, IN DO. DO. DO.

BY ADV. SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN
SMT.GEETHA P.MENON

RESPONDENTS: SUPPLEMENTAL RESPONDENS 2 TO 9 IN A.S./LEGAL REPRESENTATIVES OF PLAINTIFF IN SUIT.

---

1. SHAHUL HAMEED, S/O.ATHAR MUHAMMED RAWTHER, RESIDING AT VETTILAPOTTAYIL, KIZHAKKETHARA AMSOM, MUTHALAMADA VILLAGE, CHITTUR TALUK.

2. MUHAMMED YUSUFF, S/O. DO IN DO. DO.

3. MUHAMMED HANEEFA, S/O. DO. IN DO. DO.

4. PYARIJAN, W/O.PEERMUHAMMED, MAMANIKALAM, PAYYALUR, KOLLENGODE, CHITTUR TALUK.

5. A.SULAIMAN, S/O.ABDUL RAHIMAN RAWTHER, RESIDING AT LAY OUT (1/17) THAYYAMMAL THERUVU, GANDHI ROAD POTHANUR, COIMBATORE DISTRICT, TAMIL NADU.

6. A. WAHAB, S/O.ABDUL RAHIMAN, IN DO. DO.

7. SAITHUN, W/O.LATE MUTHU KABEER, RESIDING AT PULAYANPARA POST, MADATHUPADI, NELLIYAMPATHI, CHITTUR TALUK.
8. SHERI, S/O. DO. DO. DO.

BY ADV. SRI.V.CHITAMBARESH(CAVEATOR)

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 08/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO.923/07 IN R.S.A.NO.417/2007

8.6.07 DISMISSED SD/- M.SASIDHARAN NAMBIAR
JUDGE

/true copy/

P.S. To Judge

**M.SASIDHARAN NAMBIAR,J.**

==========

R.S.A.NO. 417 OF 2007

==========

Dated this the 8th day of June, 2007

JUDGMENT

Defendants 1 and 2 in O.S.329/1996 on the file of Munsiff Court, Chittur are the appellants. Respondents are legal heirs of deceased plaintiff. Respondents instituted the suit seeking a decree for mandatory injunction contending that plaint schedule property along with the western six cents was purchased by deceased plaintiff and his brother Attar Shaik Rowther as per sale deed No.821/55 of Kollengode Sub Registry and there was an oral partition between the brother and the western six cents was allotted to the plaintiff and the eastern six cents to his brother and thereafter plaintiff obtained the purchase certificate from the Land Tribunal and there was a hut in the plaint schedule property which was originally rented out to his sister Hajiraha and she along with her husband first defendant were residing therein and

after the death of sister on 15.10.1989 the husband left the place and they started residing with his son Kudaku and subsequently the hut was destroyed due to fire. Second defendant is the daughter of Hajiraha and first defendant the husband. First defendant is conducting a butcher shop at Payyalor. It was contended that for the convenience of his business, on the request of defendants they were permitted to put up a hut. Plaintiff constructed a hut and they were allowed to occupy the same without any rent as per a license and while they were residing, defendants started construction of a concrete building and laid a trench for the foundation and they have no right to do so. The licence has been terminated and plaintiff is entitled to a decree for mandatory injunction directing them to vacate the building with mesne profits. The suit was subsequently amended after impleading the third defendant, to claim a decree for recovery of possession on the strength of title. The defendants in their written statement

admitted the title of the plaintiff. It was contended that the plaintiff had shifted his residence to Vettilapotta and after plaintiff purchased 12 cents in the year 1955 six cents of the property on the western side is in the possession and enjoyment of the father of the second defendant as per a lease obtained from the owner Petta @ Meenakshi and father of the second defendant has tharikuthi right about 47 years back and the father of the second defendant was in possession of the property and the plaintiff purchased 12 cents including the property in the possession of the father of the second defendant and they got the sale deed acknowledging possession of the father of the second defendant and there was no oral partition and father of the second defendant got purchase certificate from the Land Tribunal as per S.M.No.290/1979 of Kollengode Land Tribunal and therefore plaintiff is not entitled to the decree sought for.

2. Learned Munsiff framed necessary issues.

On the evidence of PW1 and 2 and Dws. 1 to 3 and Exts.A1 to A6, B1 to B6, learned Munsiff granted a decree directing defendants to put the plaintiff in possession of the plaint schedule property. They were directed to demolish the building now in existence in the plaint schedule property. Plaintiff was also granted a decree for realisation of mesne profits at the rate of Rs.200/- per annum. Defendants challenged the decree and judgment before District Court, Palakkad in A.S.64/2000. Learned Additional District Judge on reappreciation of evidence confirmed the findings of the learned Munsiff and dismissed the appeal, which is challenged in this appeal.

3. Learned counsel appearing for appellants and learned counsel appearing for respondents who filed the caveat O.P were also heard.

4. The argument of the learned counsel appearing for the appellants was that courts below ignored Ext.B1 which is binding on the whole world including even plaintiff and under section 72K of

Kerala Land Reforms Act it is a conclusive proof of title and in the light of Ext.B1, courts below should not have granted a decree for recovery of possession. It was also argued that even if plaintiffs were not impleaded in S.M.290/79, the validity of Ext.B1 can be challenged only by Meenakshi the landlord and not by the plaintiffs and it is binding on them and hence courts below should not have granted the decree sought for.

5. On hearing the counsel for appellants, I do not find any substantial question of law involved in the appeal. As rightly pointed out by the learned counsel for the respondents, in the written statement itself, there is a clear admission about the title of the plaintiff. It was admitted that the plaintiff and the brother purchased 12 cents of the property including the plaint schedule property. What was contended by the appellants was only that even at that time father of the second defendant was in possession of the property as a lessee under Meenakshi and it was acknowledging

that right plaintiff purchased the property. There was absolutely no evidence to prove the said lease or the alleged acknowledgement by the plaintiff. Though Ext.B1 purchase certificate was produced and it was argued that under section 72K of Kerala Land Reforms Act it is to be treated as conclusive title to the property and as the plaintiff did not file an appeal challenging Ext.B1 or a suit seeking a decree to set aside Ext.B1, Ext.B1 is binding on respondents, as rightly found by courts below, it is proved that Ext.B1 purchase certificate was obtained by the appellants without impleading respondents or even the alleged landlord in the party array. In such circumstance, it is clear that Ext.B1 is a fradulent purchase certificate obtained without impleading the landlords. Hence there is no necessity to set aside Ext.B1. When it is proved that Ext.B1 purchase certificate was obtained without the alleged landlord in the party array and it is admitted by the appellants themselves in the

written statement that title to the property vests with the plaintiff, Ext.B1 will not be binding on the respondents. Therefore courts below rightly granted a decree for recovery possession as sought for. No substantial question of law is involved in the appeal. Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

---

W.P.(C).NO. /06

---

JUDGMENT

SEPTEMBER,2006